

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

SEAN ESCHELBACH,

Plaintiff,

v.

NDOC, *et al.*,

Defendants.

Case No. 2:24-cv-01273-GMN-MDC

DISMISSAL ORDER

Plaintiff Sean Eschelbach ("Plaintiff") brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Southern Desert Correctional Center. (ECF No. 4 at 1.) On January 29, 2025, this Court ordered Plaintiff to update his address and file an application to proceed *in forma pauperis* by a non-prisoner by February 21, 2025. (ECF No. 7 at 1.) That deadline expired without an updated address from Plaintiff, and his mail from the Court is being returned as undeliverable. (See ECF No. 8.) Plaintiff also failed to file an application to proceed *in forma pauperis* by a non-prisoner or pay the full filing fee of \$405.

I. DISCUSSION

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th

1 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
2 dismiss an action on one of these grounds, the Court must consider: (1) the public's
3 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
4 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
5 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
6 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
7 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

8 The first two factors, the public's interest in expeditiously resolving this litigation
9 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
11 because a presumption of injury arises from the occurrence of unreasonable delay in filing
12 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
14 cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic alternatives can
16 be used to correct the party's failure that brought about the Court's need to consider
17 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
18 that considering less drastic alternatives *before* the party has disobeyed a court order
19 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
20 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
21 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
22 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
23 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
24 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
25 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
26 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed without
27 the ability for the Court and the defendants to send Plaintiff case-related documents,
28

1 filings, and orders, the only alternative is to enter a second order setting another deadline.
2 But without an updated address, the likelihood that the second order would even reach
3 Plaintiff is low, so issuing a second order will only delay the inevitable and further
4 squander the Court's finite resources. Setting another deadline is not a meaningful
5 alternative given these circumstances. So the fifth factor favors dismissal.

6 **II. CONCLUSION**

7 Having thoroughly considered these dismissal factors, the Court finds that they
8 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
9 prejudice based on Plaintiff's failure to file an updated address and an application to
10 proceed *in forma pauperis* by a non-prisoner in compliance with this Court's January 29,
11 2025, order. The Clerk of Court is kindly directed to enter judgment accordingly and close
12 this case. No other documents may be filed in this now-closed case. If Plaintiff wishes
13 to pursue his claims, he must file a complaint in a new case and provide the Court with
14 his current address.

15
16 March 4, 2025

17 
18 _____
19 Gloria M. Navarro, Judge
20 United State District Court
21
22
23
24
25
26
27
28